

EXHIBIT B

In The United States District Court
For the District of Delaware

JAMES HALL,
Plaintiff

V.

DAVID HOLMAN ET AL.,
Defendants

C.A. NO. 04-1328-GMS

Objection

Pursuant to the Appropriate F.R.C.P. and all other case law
authorities pursuant to F.R.C.P. 26 and 33, of the Federal
Rules of Civil Procedure.

Statement of facts

Defendants submitted a letter. Dated November 2, 2005 which Masquerades
As Motion objecting to plaintiff's Discovery Request. Defendant only offer the
Court and plaintiff a vague claim that Discovery should not proceed because
of their motion to Dismiss. However no such motion has yet been
filed. Plaintiff would like to object to this FRIVOLUS "non conforming"
letter. which has no Certificate of Service as Required by the Court's Requirement
All Submission to ~~the~~ or reflect proof of service Also no Affidavit as to
Good faith efforts as Required by the Rule Defendant's failed to support
Their objection with pertinent factual allegations and on the absent
motion to Dismiss, Plaintiff must Reply Accordingly Plaintiff offers the
Following in support of his motion to object. Defendant Demurel.

Memorandum of Law

1. Defendants are Asking for protection via a letter. The F.R.C.P. 26(c) states the moving party must confer and make attempts to contact plaintiff. Defendants have not made a Goodfaith effort nor have they made any attempt to contact plaintiff and have not explained to the Court why not. Moreover, The Requisite is belied by their Shameless Delay tactic.
1. [Defendants want to Dupe the Court in frustrating plaintiff's properly filed and legitimate Discovery request they ERRONEOUSLY Believe that they can force plaintiff to prove his case at "the Complaint stage" without the Aid of Discovery]
2. FACT ARE in possession of defendants and it is inappropriate under F.R.C.P. 56(E) To Deny A legitimate Discovery Request by a pro.se plaintiff who was considered a friend of this Court. Our learned Jurist Judge JJ Conqobashi ruled accordingly. for A pro.se Plaintiff Against Defendants to move for a protection order Against Discovery. The Brown Court Defendants also requested protection from Discovery until their motion to Dismiss ~~was~~ ruled upon. However the Court ruled Against a motion to Dismiss and more importantly stated.

Should it appear from the Affidavits from a party opposing a motion [plaintiff] that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition. The court may... order depositions be taken or discovery to be had or may make other order as is just. *Jerome D. Brown v. Warden Sherese D. Johnson* C.A. 96-184-CON

3. In other words Rule 56(E) follows the Axiom that it is inappropriate to prohibit a legitimate discovery request where - As here - the evidence etc. is in the possession of Defendants (Please see attached affidavit A.2)

wherefore, plaintiff James Hall does hereby swear and certify under oath penalty of perjury that the instant objection to Defendant opposition to plaintiff Discovery Request is lawful not improperly motivated, and not unreasonably burdensome or expensive

Plaintiff See, Pro Se pleading Leniency under *Hines v. Harner* 404 U.S. 519 (1972)

James Hall
 JAMES HALL 167581
 DOC. Delaware Correctional Center
 1181 Proctor Rd Smyrna, DE
 121 14977

11-44 05
 Date

1A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JERON D. BROWN,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 96-184 LON
)	
WARDEN SHERESE B. JOHNSON, ¹)	
)	
Defendant.)	<u>O R D E R</u>

1. Plaintiff has filed this action for declaratory, injunctive, and monetary relief due to alleged Eighth and First Amendment (through the Fourteenth Amendment) violations that occurred over the first weekend of March 1996. Plaintiff alleges that Housing Pod 1-E was subjected to lockdown starting at 10:00 p.m. on March 1, 1996, and that for three days and two nights he could not come out of his cell for showers, recreation, phone calls, religious services, or to submit grievances. Plaintiff alleges that he was subjected to unsafe and unsanitary conditions "forced upon us by Warden Mrs. Sherese B. Johnson."

2. Three motions are currently pending before the Court. Defendant has moved to dismiss the complaint (D.I. 11) and for a protective order (D.I. 23). Plaintiff has moved to correct deficiencies in his response to the motion to dismiss. (D.I. 26).

3. By letter dated February 13, 1997, Plaintiff requested that the Court consider a belatedly filed affidavit in

1. Defendant's name is actually Sherese Brewington-Carr.

opposition to the motion to dismiss. (D.I. 26). He asked the Court to consider his request to be "a motion to correct deficiencies by affidavit." (D.I. 26). Defendant has not opposed this request. The Court will grant Plaintiff's motion to correct deficiencies by affidavit and will, as a result, consider Plaintiff's affidavit (D.I. 28) in resolving the motion to dismiss.

4. Defendant has supported her motion to dismiss with the affidavit of Deputy Warden Raphael Williams. In an Order dated August 22, 1996, this Court held that "[i]n the event a motion to dismiss is filed accompanied by affidavit(s) or other matters outside of the pleadings, the motion will be treated as one for summary judgment under Federal Rule of Civil Procedure 56(c)." For that reason, this Court will treat the motion to dismiss as a motion for summary judgment.

5. The affidavit of Raphael Williams avers that there was no "lockdown" on the weekend in question. Deputy Warden Williams states that the logbook for March 1, 1996, indicates that at 10:11 p.m. the inmates on 1-E Pod were locked in to allow Booking and Receiving residents to sleep on the pod floor. (D.I. 12 at A-2). He disputes the allegation that Plaintiff was locked in his cell all weekend as alleged. In his affidavit, Deputy Warden Williams relates the normal procedure that is followed when Booking and Receiving inmates are housed in the day room of the pod, but he does not state that he has personal knowledge of what actually occurred on the first weekend in March 1996.

Instead, he relies on the logbook and the Shift Commander's Blotter.

6. Defendant has provided the logbook and Shift Commander's Blotter neither to this Court nor to Plaintiff. Plaintiff has indicated in his answering brief that he requires such information to rebut adequately the affidavit of Deputy Warden Williams. (D.I. 22 at 1). Moreover, in Plaintiff's affidavit he disputes the facts as recited in Deputy Warden Williams's affidavit and states that the logbooks and Shift Commander's Blotter will show the truth. Plaintiff believes that this discovery will demonstrate that a lockdown occurred on March 1-3, 1996, which resulted in the deprivation of his rights. Plaintiff requests that this Court deny the "motion for summary judgment" and order Defendant to reply to Plaintiff's requests for discovery.

7. Defendant has moved for a protective order, pursuant to Fed.R.Civ.P. 26(c), that discovery not be had until thirty days after the motion to dismiss is decided. In support of her motion, Defendant argues that "it is well settled that discovery is generally considered inappropriate while a motion which would be thoroughly dispositive of the claims and the complaint is pending. (D.I. 23). However, Fed.R.Civ.P. 56(f) provides as follows:

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a

continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

8. This Court will exercise its discretion to deny the motion to dismiss and to establish a schedule for discovery and the briefing of summary judgment motions. It simply seems inequitable to rule on the motion to dismiss, based at least in part about representations of what is contained in the logbooks and the Shift Commander's Blotter, without allowing Plaintiff access to those materials and other relevant discovery.

NOW, THEREFORE, IT IS ORDERED that:

1. Defendant's Motion to Dismiss (D.I. 11) is DENIED.
2. Defendant's Motion for a Protective Order (D.I. 23) is DENIED.
3. Plaintiff's Motion to Correct Deficiencies (D.I. 26) is GRANTED.
4. Defendant shall respond to all outstanding discovery no later than July 4, 1997.
5. All discovery shall be initiated so that it will be completed no later than August 12, 1997.
6. No party shall direct more than 35 written interrogatories to any other party, including each subpart as a separate interrogatory, or more than 35 requests for admissions to any other party, including each subpart as a separate request. The discovery already served counts toward those limitations.

7. All case dispositive motions accompanied by briefs not to exceed 15 pages and affidavits shall be served upon counsel and filed with the Court no later than September 2, 1997. Answering briefs not to exceed 15 pages shall be served and filed no later than September 23, 1997. Reply briefs not to exceed 7 pages shall be served and filed no later than October 3, 1997.

6/2/97



Joseph J. Longobardi, D.J.

In the United States District Court
for the District of Nebraska

James Hall,

Plaintiff

v.

David Holman, Lawrence McQuiggin

Clyde D. Sagers,

Defendant

C.A. No 04-1328-GMS

Affidavit of James Hall

Come now the plaintiff James Hall and states
under penalty of perjury that the statements and facts
made herein are true and correct to the best of Affiant's
knowledge

A.2 The Discovery Sought is Relevant to the Claims and Defenses in the case.

Rule 26, Fed R. Civ. P. permits discovery of matters "relevant to the subject matter involved in the pending action.... It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." in the discovery stage, relevance is construed "broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case" *Oppenheimer Fund, Inc. v. Sparks*, 437 U.S. 340, 351, 98 S.Ct. 2380 (1978) (footnotes omitted); Accord, *Weiss v. Amoco Oil Co.*, 142 F.R.D. 311, 315 (S.D. Iowa 1992). Discovery Request should be allowed "unless it is clear that the information sought can have no possible bearing upon the subject matter of the action." *CA Chemise Lacosta v. Alligator Co. Inc.*, 60 F.R.D. 164, 171 (D. Del. 1973). See *Nash v. Thelke*, 743 F.Supp. 130 (E.D. Wis. 1990) (The Plaintiff was entitled to an officers' urine test results, since the officers sobriety during the incident was an issue in the case).

1 Each item sought by the Plaintiff is Relevant to the Claims and Defenses in the case.

A. Documents Relevant to past mistreatment of inmate by Defendant David Holman, Lawrence Alquist, Clyde D. Rogers

Item 9, 10, 11, of the Plaintiff's Request. Any and all grievances, complaints or other documents received by the Defendants or their Agents at Delaware Correctional Center concerning mistreatment of inmates and any memoranda, investigative files, or other documents created in response to such documents, since 1-20-04

Plaintiff, James Hall, does hereby swear and certify under penalty of perjury that the instant Affidavit is in support of Plaintiff's objection to Defendant's opposition to Plaintiff Discovery Request.

Plaintiff seeks pleading leniency under *Fraver v. South Eastern Plans Trans, Auto*, 785 F.2d 65 n.3 (3rd cir. 1986). and *Haines v. Kerner*, 404 U.S. 519 (1972) as a pro se incarcerated litigant and friend of the court


James Hall

1181 preblock rd Smyrna
Delaware, 19677

11-19-05

Dole

In The United States District Court
For the District of Delaware

James Hall,
Plaintiff

v.

David Holman Et. Al.,
Defendants,

Case No. 04-1328-GMS
Request for production of
Documents.

Plaintiff's First Request for production of Documents

Pursuant to F.R.C.P. 26 AND 34 Plaintiff Request that the Defendants produce the following documents. please produce the Documents to Plaintiff. The plaintiff request defendant produce documents Listed herein within (30) day's, either by providing plaintiff with copies or by making them Available to the plaintiff with and for inspection and copying. At Delaware Correctional Center 1181 Paddock Rd Smyrna 19971. (D.C.C.) Del.

1. All documents that mention, contain, construe, or refer to policies on staff supervision of inmates with threatened Bodily harm at the Delaware Correctional Center
2. All documents that contain, mention, construe, or refer to policies on responses to potential threats on inmate Health or Safety that are dire or obvious at the Delaware Correctional Center
3. All Documents that contain, mention, construe, or refer to policies on responses to serious medical need that are dire, or obvious at the Delaware Correctional Center.
4. All Documents that evidence, mention, or refer to the serious medical need of plaintiff James Hall on 1-22-04 including but not limited to medical records, incident reports, statement and other investigative material and documents relating to subsequent staff discipline if any
5. Any and all policies, directives or instructions to staff governing threats of Bodily harm and sick-call procedures in general, and Segregation population
6. Any and all documents and reports concerning a disturbance in Wtlu 23.B tier on 6-6-04 including but not limited to, disciplinary charges, statement of witnesses, incident reports, findings and conclusion of disciplinary hearing, etc.

7. The complete contents of Plaintiff's Delaware Correctional Center file including but not limited to disciplinary reports, incident reports evaluations criminal justice information and medical and mental health records
8. all incident reports that evidence, mention, or refer to incidents of Assault Inmate-Inmate at the Delaware Correctional Center that have occurred from 1-20-03
9. All documents written or created since 1-20-04 that contain mention constitute, or refer to any inspection inquiry, or complaint about inadequate staffing or supervision of (MTHU 23.) Maximum Housing Unit Building #23, Inadequate medical or substandard medical treatment and serious medical needs at the Delaware Correctional Center. whether formal or informal, official or unofficial including Inmate Staff Civilian grievances. Complaints and appeal and including responses to such documents prepared by Delaware Correctional Center Staff or other Agents.
10. A listing of any and all past litigation that resulted in any consent decree and or favorable outcome of inmate plaintiffs whether published or not published which involve the condition of confinement, medical grievances or medical treatment issues and failure to protect.
11. Any and all policies, directives or instructions to staff governing inmate grievances and the institution duty regarding same
12. The complete contents of Plaintiff's Delaware Correctional Center file including but not limited to disciplinary reports, incident reports, Evaluation criminal justice information and mental health records

Plaintiff, James Hall, does hereby swear and certify under penalty of perjury that the instant Request for Discovery is careful, not improperly motivated and not unreasonably burdensome or expensive.

Plaintiff seeks pleading leniency under Frazier v. South Eastern Bell, Inc., 785 F.2d 651, 3 (3rd Cir. 1986). and Haines v. Kerner, 404 U.S. 519 (1972) as a prose incarcerated litigant and friend of the Court

James Hall
James Hall, Prison # 167551
1181 Grubbs Rd. Sayre, MS
38877

This 26 day of ~~Oct~~ October
Date